

September 30, 2011

VIA ELECTRONIC SUBMISSION

Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: In the Matter of Acceleration of Broadband Deployment Expanding the Reach and Reducing the Cost of Broadband Deployment by Improving Policies Regarding Public Rights of Way and Wireless Facilities Siting (WC Docket No. 11-59)

Dear Commissioners:

The Public Water Agencies Group (the "Group") submits this letter in the above-captioned inquiry proceeding. The Group is an informal association of 17 public water agencies that provide water service throughout Los Angeles County, California.¹

The communications industry has submitted comments to the Commission that criticize not only local regulation, but also prices charged by all types of public entities, including special districts, for the use of all types of public real estate.² The industry appears to suggest that the Commission can rewrite leases and contracts entered into years ago for use of publicly-owned personal and real property. The Group's members oppose such action. The Commission long ago recognized that the Communications Act does not permit it to regulate entities like the

¹ The Group consists of Crescenta Valley Water District, Kinneloa Irrigation District, La Habra Heights County Water District, La Puente Valley County Water District, Newhall County Water District, Orchard Dale Water District, Palmdale Water District, Pico Water District, Quartz Hill Water District, Rowland Water District, San Gabriel County Water District, San Gabriel Valley Municipal Water District, Sativa-Los Angeles County Water District, South Montebello Irrigation District, Three Valleys Municipal Water District, Valley County Water District and Walnut Valley Water District.

² Comments of Level 3 Communications, LLC, WC Docket No. 11-59 (July 18, 2011) (urging the Commission to preempt the pricing terms of the contract that Level 3's predecessor-in-interest entered into with the New York State Thruway Authority); Comments of CenturyLink, WC Docket No. 11-59, at 8 (July 18, 2011) (criticizing policies of Elephant Butte Irrigation District).

Group's members, or their property.³ We urge the Commission to respect the basic property rights of public agencies and recognize that wireless service providers should have no preferential right to place additional facilities on public agency property, including rooftops, water district tanks and structures and other facilities at less than fair market value and without their consent.

As special districts created under California law,⁴ the Group's members' powers include provision of public water service at both the wholesale and retail levels, water supply development and planning, water and wastewater treatment and disposal, and water recycling. Combined, the Group's members provide services to over a million people throughout Los Angeles County.

Under California law, the Group's members generally have the power to lease real property. See, e.g., Cal. Water Code §§ 22506 for irrigation districts, 31041 for county water districts, 35604 for California water districts and 71690(b) for municipal water districts. While the Group's members in some circumstances have the right to occupy certain private property for the transport of water, these property rights are not generally open to the public for transit, or to public use in the same way as a street; many of these water conveyance rights-of-way are subject to use restrictions. Likewise, the members' properties, such as tanks, reservoirs, and maintenance yards, are essentially operated as private property, with entry restricted.

While the primary mission of the Group's members is to provide water service, many of the member districts also lease and license space on certain parts of their properties to wireless providers at market-based rates. These are proprietary agreements much like leases for access to privately-owned property. Those site lease/license agreements establish how these wireless entities may use the members' property and must consider, among other things, safety and security risks associated with allowing third parties to access critical public water supply infrastructure. These are critical issues of significant importance to all water agencies and the public at large.

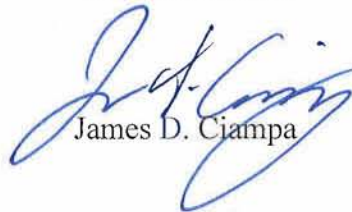
The Group's members have no interest in leasing their property in exchange for the recovery of their costs alone. Doing so would not adequately compensate the respective members for the burdens and risks that necessarily coincide with allowing third parties to use their property and infrastructure. Similarly, if the Commission were to selectively preempt certain terms of existing leases and licenses (including the price terms), the Group's members would have little or no incentive to enter into such agreements at all.

³ *California Water and Tel. Co.*, 64 FCC 2d 753, 758-59 (1977).

⁴ PWAG's members are various types of water districts formed under the California Water Code. PWAG consists of irrigation districts (Water Code Division 11), county water districts (Water Code Division 12), California water districts (Water Code Division 13) and municipal water districts (Water Code Division 20).

In conclusion, the Commission cannot and should not interfere with public agencies' basic property rights. Any Commission efforts to regulate leasing of public water agency infrastructure and real property—or any action that calls into question the enforceability of existing, voluntarily-negotiated agreements—could obstruct the important operations of public water agencies throughout the country, increase public safety risks, and undermine a system that is currently adequately promoting broadband deployment. Regulation, in short, is likely to create significant new risks that will actually discourage leasing property to communications providers and could result in reducing availability of facilities for broadband deployment.

Very truly yours,



James D. Ciampa

JDC/cc

cc: Association of California Water Agencies (via e-mail)
Public Water Agencies Group Members (via e-mail)